

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAMELA JOHNSON)	
Claimant)	
VS.)	
)	
MANOR CARE NURSING CENTER)	Docket No. 198,615
Respondent)	
AND)	
)	
NATIONAL UNION FIRE INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

The respondent appealed the August 9, 1996, Award of Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument by telephone conference on January 16, 1997.

APPEARANCES

Claimant appeared by her attorney, Dennis L. Phelps of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Stephen J. Jones of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record listed in the Award and has adopted the stipulations listed in the Award.

ISSUES

The respondent in its Application for Review and the claimant at oral argument raised the single issue of nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge found claimant was entitled to permanent partial general disability benefits based on a work disability of 50 percent. He found claimant had failed to prove the work tasks loss component of the work disability test. However, the Administrative Law Judge did find that the wage loss component was 100 percent as the claimant was not employed at the time of the regular hearing. The Administrative Law Judge averaged claimant's zero percent work tasks loss with the 100 percent wage loss resulting in a 50 percent work disability. See K.S.A. 44-510e(a).

The Appeals Board agrees with that conclusion and thus affirms the Administrative Law Judge's Award. The Appeals Board finds the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those in this order. The Appeals Board also finds the findings and conclusions set forth in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts such findings and conclusions as its own.

Specifically, the Appeals Board agrees that neither claimant's treating physician, Tyrone D. Artz, M.D., nor any other physician expressed an opinion on claimant's work tasks loss as required by K.S.A. 44-510e(a). Additionally, the Appeals Board finds that the rationale of Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995) does not apply to the facts of this case as argued by the respondent. The claimant in this case was terminated by the respondent while she was receiving treatment for her bilateral hand injuries because she missed work for the medical treatment. After claimant was released with permanent restrictions by Dr. Artz, following bilateral carpal tunnel syndrome release surgeries, claimant returned to the respondent and the respondent failed to offer her a job at a comparable wage within those restrictions. Claimant therefore was eligible for an award based on work disability because she had not returned to work earning wages equal to 90 percent of her preinjury wage. See K.S.A. 44-510e(a). The evidentiary record does not contain evidence that claimant refused to attempt to perform a job within her permanent work restrictions as the claimant did in Foulk.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated August 9, 1996, should be, and is hereby, affirmed.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Pamela Johnson, and against the respondent, Manor Care Nursing Center, and its insurance carrier, National Union Fire Insurance Company, for an accidental injury which occurred on February 6, 1995, and based upon an average weekly wage of \$219.18.

Claimant is entitled to 38.57 weeks of temporary total disability compensation at the rate of \$146.13 per week or \$5,636.23, followed by 195.72 weeks of permanent partial disability compensation at the rate of \$146.13 per week or \$28,600.56 for a 50% permanent partial general disability based on work disability, making a total award of \$34,236.79.

As of April 25, 1997, there is due and owing claimant 38.57 weeks of temporary total disability compensation at the rate of \$146.13 per week or \$5,636.23, followed by 77 weeks of permanent partial disability compensation at the rate of \$146.13 per week in the sum of \$11,252.01 for a total of \$16,888.24, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$17,348.55 is to be paid for 118.72 weeks at the rate of \$146.13 per week, until fully paid or further order of the Director.

The Appeals Board approves and adopts all remaining orders of the Administrative Law Judge contained in his Award.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Phelps, Wichita, KS
Stephen J. Jones, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director